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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1963

No. 32

THE HONORABLE JAMES B. PARSONS, Judge of the United States District Court for the Northern District of Illinois, Eastern Division,

Petitioner,

vs.

THE CHESAPEAKE & OHIO RAILWAY COMPANY, a Corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

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The Brief for Respondent does not answer the Petitioner's Brief but instead ignores both it and the 2nd Opinion of the Court of Appeals granting a writ of mandamus. This is done by arguing that the issuance of the writ was compelled by *res judicata* (pps. 6-14). This argument was anticipated in my Brief (pps. 9, 10) and is further erroneous because it equates a federal District Court with a Cook

County Court. The material factual issues are different when that error is alone corrected and also for reasons stated in the dissent below (R. 87-91). The situation is not clarified by characterizing the residence of the plaintiff as a "happenstance" (Brief, p. 13).

Respondent's treatment of the reason for the decision below, the requirements of full faith and credit, ineptly restates the majority opinion of the Seventh Circuit. Its statement that Petitioner has never seriously contended that an Illinois Court would not have dismissed on the basis of the Circuit Court's judgment (p. 17) is a misrepresentation of Petitioner's position raising the point that all of the courts of the state were not closed to the plaintiff in this case (Brief for Petitioner, p. 12). Indeed, even other Cook County Courts might have retained the underlying cause of action if the question had been presented to them because no rule of law requires the second county court to dismiss.

Respondent next contends that Petitioner abused his discretion. No such question is here involved since both the majority and dissenting opinion refused to decide that question in Respondent's favor.

Respondent's final contention is that mandamus was proper. Mandamus, however, is no substitute for appeal. *Aday* v. *U. S. Dist. Ct. for W. D. of Mich.*, 6th Cir., 318 F. 2d 588, 591 (1963). An interlocutory appeal was available under *28 U. S. C. 1292 (b)* passed by Congress to provide for review of orders under *28 U. S. C. 1404 (a)*, 62 Stat. 937. *In re Humble Oil & Refining Co.*, 5th Cir., 306 F. 2d 567, 568 (1963). Denial of petitions for mandamus serves salutary purposes in respecting congressional purpose and in preventing interlocutory reviews of what are by their nature discretionary orders. Any other course will encourage piecemeal appeals in cases which are not extraordinary.

CONCLUSION

For the reasons stated in the Brief for Petitioner as well as in this Reply Brief and because of the demands of law and of substantial justice, the judgment of the Court of Appeals for the Seventh Circuit granting a Writ of Mandamus should be reversed.

Respectfully submitted,

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